IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 421 of 2003
WITH
CRIMINAL MISC.APPLICATION NO. 9375 OF 2003

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Appearance :
MR LR PATHAN for Applicant(s) : 1,
MS MITA PANCHAL, APP for Respondent(s) : 1,
MR PP BANAJI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE
Date : 24/04/2006

COMMON **ORAL ORDER**

The short question that arises for determination in the present petition filed under Article 227 of the Constitution of India is whether it is open to a private Advocate not appointed as a Public Prosecutor to conduct the proceedings of a criminal complaint pursuant to the order passed by the Sessions Court, with a specific direction, while not upholding the order of “C” Summary granted by the learned JMFC and to treat the same as a criminal complaint by the police authority.

2. The short facts, for consideration in this petition are that the respondent No.2 had filed a complaint under Sec.406 read with Sec.114 of Indian Penal Code (“IPC” for short) against the present petitioner and one Mohammed Hanif Wali Patel in the Court of Chief Judicial Magistrate, Bharuch which was sent for investigation under Sec.156(3) of Cr.PC and after completing the

inquiry, a report was submitted and accordingly, the learned Chief Judicial Magistrate, granted “C” Summary, which was challenged in the revision application by the original complainant, which came to be allowed and granting of “C” Summary by learned JMFC was quashed and set aside and the complainant was ordered to file criminal case against the present petitioner and another co-accused. Thereafter, the trial was held against Mohammed Hanif Wali Patel, where he came to be acquitted and the case against the present petitioner remained pending. It was objected that pursuant to the order passed by the learned Sessions Judge, the case was to be conducted only by the authorised Public Prosecutor, since the same has lost the character of private complaint. Besides, it was submitted that once the investigation is carried out pursuant to the order passed under Sec.156(3) of the Code and the report is submitted, private Advocate has no role to play when the matter is to be conducted by the notified Public Prosecutor only.

3. The aforementioned objection raised by the learned Advocate for the applicant herein was not accepted and the learned Chief Judicial Magistrate, Bharuch, by order dated 13.7.2002 rejected the application of the present

petitioner.

Being aggrieved and dissatisfied by the aforesaid order, the present petitioner has preferred Revision Application No. 85 of 2002 before the learned Sessions Judge, Bharuch, which came to be rejected on the ground that the order passed below Exh.48 by the trial Court is of interlocutory nature and therefore, there was no reason to interfere in exercise of discretion under sub-Section (2) of Section 397 of the Code and the revision came to be rejected.

4. Being aggrieved and dissatisfied by the aforesaid order, the present petition has been filed under Article 227 of the Constitution of India and it is contended that the lower Court has failed to exercise jurisdiction in accordance with law and rejection of the application is on technical ground and the order of the learned Chief Judicial Magistrate being an interlocutory order, is illegal and it is submitted that the revisional Court was required to undertake the exercise of examining the nature of controversy, whether the private Advocate was competent to prosecute the case and conduct the trial since the investigation was ordered under Sec.156(3) of

the Cr.PC and the order passed by the learned Sessions Judge on 31.1.199 in earlier Revision Application No. 69 of 1994 where he had quashed and set aside the “C” Summary of the learned Chief Judicial Magistrate and the complainant was directed to file criminal complaint against the present petitioner.

5. I have heard learned APP, Ms.Mita Panchal appearing for the respondent State. She has submitted that in view of the nature of dispute involved in the subject matter of this petition, it is borne out that, criminal complaint, as ordered by the learned Sessions Judge, while quashing the grant of “C” Summary on earlier occasion, the trial ought to have been conducted by the Public Prosecutor.

6. Considering the facts and circumstances of the case, and in view of the submissions canvassed, I am of the view that both the Courts below have failed to exercise the power in correct perspective, since the criminal complaint was ordered to be filed by the learned Sessions Judge, while quashing the order of grant of “C” Summary, the same ought to have been conducted by the authorised and notified Public Prosecutor. There is no role for the

private Advocate to prosecute the criminal complaint, particularly when the report under Sec.173 is submitted by the IO upon inquiry held under Sec.156(3) of Cr.PC. Considering the above facts and admitted position of law, the order passed by the learned Sessions Judge dated 30th Dec.2002 is hereby quashed and set aside and it is directed that the trial Court shall proceed with the trial in accordance with law.

7. With the aforesaid observation and direction, the petition is allowed and the rule is made absolute. No order as to costs.

8. However, it is observed that this will not preclude if the complainant is desirous of assisting the learned Public Prosecutor in conducting the trial.

9. In view of the order passed in the main petition, the Criminal Misc.Application will not survive and it stands disposed of accordingly.

(Anant S.Dave, J.)

Sreeram.